

**TOWNSHIP OF LOWER NAZARETH  
NORTHAMPTON COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 2009-199-11-09**

**AN ORDINANCE**

**ESTABLISHING STANDARDS FOR OUTDOOR SOLID FUEL  
BURNING APPLIANCES AND PROVIDING FOR DEFINITIONS,  
SPECIFIC REQUIREMENTS, PERMITS, LIABILITY, ENFORCE-  
MENT AND PENALTIES.**

BE IT ENACTED AND ORDAINED by the Board of Supervisors of Lower Nazareth Township, Northampton County, Pennsylvania, as follows:

**SECTION 1. APPLICABILITY**

This Ordinance applies to all outdoor burning furnaces, boilers and appliances within the Township of Lower Nazareth.

**1.1** This Ordinance does not apply to grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances.

**1.2** This Ordinance does not apply to burning in a stove, furnace, fireplace or other heating device within a building or structure used for human or animal habitation.

**1.3** This Ordinance does not apply to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.

**SECTION 2. PURPOSE AND SCOPE**

Whereas the Board of Supervisors of Lower Nazareth Township has determined that air pollution from outdoor solid fuel burning appliance may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of Lower Nazareth Township, it is hereby declared to be the policy of the Township to safeguard the citizens of Lower Nazareth Township from such air pollution.

### **SECTION 3. DEFINITIONS**

**3.1** “Outdoor Solid Fuel Burning Appliance” means any equipment, device or apparatus which is installed, affixed or situated outdoors, and not situate within a building intended for habitation by humans or domestic animals, which is used for the primary purpose of combustion of fuel to produce heat for energy as a heating system, or component thereof, which provides heat or hot water to the principal structure, to a structure used for human or animal habitation, or to any accessory uses or structures, including, but not limited to, greenhouses, conservatories and swimming pools.

**3.2** “Chimney” means any vertical structure enclosing a flue or flues that carry off smoke or exhaust from a solid fuel fired outdoor heating appliance.

**3.3** EPA OWHH “Phase 1 Program” or “Phase 2 Program” - EPA OWHH (Outdoor Wood-fired Hydronic Heater Program) Phase 1 Program or Phase 2 Program administered by the United States Environmental Protection Agency.

**3.4** EPA OWHH Phase 1 Program Qualified Model - An Outdoor Wood-fired Hydronic Heater that has been EPA OWHH Phase 1 Program qualified. The model has met the EPA OWHH Phase 1 emission level and has the proper qualifying label and hangtag.

**3.5** EPA OWHH Phase 2 Program Qualified Model - An Outdoor Wood-fired Hydronic Heater that has been EPA OWHH Phase 2 Program qualified. The model has met the EPA OWHH Phase 2 emission level and has the proper qualifying label and hangtag.

**3.6** Clean wood - natural wood that has no paint, stains, or other types of coatings, and natural wood that has not been treated with, including but not limited to, copper chromium arsenate, creosote, or pentachlorophenol.

**3.7** APCA - Air Pollution Control Act.

#### **SECTION 4. MATERIALS THAT MAY NOT BE BURNED**

**4.1** Unless specific written approval has been obtained from the PA Department of Environmental Protection (DEP), the following materials may not be burned in the Township under any circumstances:

A. Rubbish or garbage including but not limited to food wastes, food wraps, packaging, animal carcasses, paint or painted materials, furniture, composite shingles, demolition debris or other household or business wastes, including paper waste and cardboard.

B. Waste oil or other oily wastes except used oil burned in a heating device for energy recovery subject to applicable PA DEP regulations.

C. Asphalt and products containing asphalt.

D. Driftwood, treated or painted wood including but not limited to plywood, composite wood products or other wood products that are painted, varnished or treated with preservatives.

E. Any plastic material including but not limited to nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, films and containers.

F. Rubber including tires and synthetic rubber-like products.

G. Any material that is not recommended for burning by the manufacturer of the appliance.

#### **SECTION 5. REGULATIONS FOR EXISTING OUTDOOR SOLID FUEL BURNING FURNACES OR APPLIANCES**

**5.1** All owners/operators of existing outdoor solid fuel burning appliances shall apply for a permit for the appliance in accordance with the permit requirements contained in Sections 6.1 - 6.15, 7.1, 7.2 and 7.5 hereof within sixty (60) days of the adoption of this Ordinance.

**5.2** Any existing non-complying outdoor solid fuel burning appliance shall be removed, replaced or modified within a period of sixty (60) days from the receipt of a notice generated from the Zoning Officer.

**5.3** Upon application for a waiver of the provisions of this Ordinance, the Board of Supervisors may grant a waiver of the provisions of this Ordinance after public hearing pursuant to the Local Agency Law, provided that all of the following findings be made, where relevant:

i. There are unique physical circumstances or conditions (including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property) and that an unnecessary hardship is due to such conditions and not the circumstances or conditions generally created in the neighborhood in which the property is located;

ii. Because of such physical circumstances or conditions, a waiver is necessary to enable the reasonable use of the property;

iii. Such unnecessary hardship has not been created by the property owner;

iv. The waiver, if authorized, will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and

v. The waiver, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the provisions of this Ordinance.

vi. In granting a waiver, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance.

## **SECTION 6. SPECIFIC REQUIREMENTS**

An outdoor solid fuel burning appliance may be used in the Township of Lower Nazareth only in accordance with the following provisions:

**6.1** An appliance shall not be used to burn any of the prohibited materials listed in Section 3 of this Ordinance. Only firewood, clean wood, untreated lumber, or pellets made from clean wood are permitted to be burned in any outdoor fuel burning appliance. Home heating oil, natural gas, propane or that which complies with all applicable sulfur limits and is used as a starter or supplemental fuel for dual fired outdoor wood burning boilers shall also be permitted.

**6.2** Any outdoor solid fuel burning appliance shall be located on a lot of not less than one (1) acre and shall be not less than seventy-five (75') feet from any lot line.

### **6.3 Chimney/Height Location.**

A. No person shall install an outdoor solid fuel burning appliance unless it has a permanent attached stack with a minimum chimney stack height of twenty (20') feet above the ground. Chimney stack height shall be no less than two (2') feet above the highest peak of any residence not served by the unit when said residence is located less than one hundred fifty (150') feet from the outdoor solid fuel burning appliance.

B. If located more than one hundred fifty (150') feet but not more than two hundred (200') feet from any residence not served by the outdoor solid fuel burning appliance, the chimney stack height shall be at least twenty-five (25%) percent of the height of the highest roof peak line of that residence plus an additional five (5') feet.

C. All chimney stacks shall be located a distance of not less than

one hundred twenty-five (125%) percent of the height of the chimney stack from any other structure.

#### **6.4**

A. All appliances shall comply with emissions standards as required for outdoor solid fuel burning appliances, as promulgated by the Environmental Protection Agency (EPA). For purposes of this Ordinance, all emission standards currently required by the EPA are hereby adopted by reference as well as any amendments or modifications made to them hereafter.

B. No person shall use or operate a new or existing outdoor solid fuel burning appliance unless it complies with all existing state and local regulations. Some regulations of this Commonwealth that could apply include:

- 25 Pa. Code Section 121.7 - Prohibition of Air Pollution
- 25 Pa. Code Section 123.1 - Fugitive Emissions
- 25 Pa. Code Section 123.31 - Odor Emissions
- 25 Pa. Code Section 123.41 - Visible Emissions
- Section 8 of the APCA, 35 P.S. Section 4008- Unlawful Conduct
- Section 13 of the APCA, 35 P.S. Section 4013 - Public Nuisances

**6.5** All appliances shall be installed, operated and maintained in strict compliance with the manufacturer's instructions and guidelines for the said appliance. In the event that a conflict arises between the manufacturer's instructions and guidelines and the regulations contained in this Ordinance, the stricter instructions or regulations shall apply.

**6.6** All ashes or waste must be disposed of in a manner approved by the Township of Lower Nazareth and/or the Pennsylvania Department of Environmental Protection.

**6.7** All appliances shall be used for the sole purpose of furnishing heat and/or hot water to a dwelling or other structure pursuant to a permit issued hereunder, including residential swimming pools and accessory structures.

**6.8** In the event that the appliance is damaged more than fifty (50%) percent, or it is physically deteriorated or decayed, the said appliance must be removed and/or replaced with a new unit within sixty (60) days of the date that notice is received from the Township of Lower Nazareth. In such event, all provisions of this Ordinance, including but not limited to permitting procedures, shall be complied with.

**6.9** Outdoor solid fuel burning appliances shall be operated only between September 1<sup>st</sup> and May 1<sup>st</sup> each year.

**6.10** Spark arrestors. All outdoor solid fuel burning appliances shall be equipped with properly functioning spark arrestors if recommended by the manufacturer.

**6.11** Catalytic converter. All outdoor solid fuel burning appliances installed within Lower Nazareth Township must be equipped with a properly functioning catalytic converter, unless the unit is EPA OWHH Phase 1 or Phase 2 Program qualified.

**6.12** Installation of any electrical or plumbing apparatus or device used in connection with the operation of an exterior furnace shall be in conformity with all applicable electrical and plumbing codes and, in the absence of such code, in conformity with the manufacturer's installation specifications.

**6.13** Standards for installation shall also require the outdoor solid fuel burning appliances be installed upon a nominal six-inch thick permanent, reinforced cement pad in such dimension so as to allow a minimum of six inches of exposed surface area along the perimeter of the pad.

**6.14** All stacks or chimneys must be so constructed to withstand high winds or other related elements.

**6.15** The use of lighter fluids, gasoline or chemicals to start the furnace is prohibited.

**6.16** The appliance shall be located on a property with due consideration to prevailing wind conditions.

**6.17** All outdoor solid fuel burning appliances shall comply with the standards of EPA OWHH Phase 2 Program qualified models or better.

## **SECTION 7. PERMITS**

**7.1** No person shall install, start or maintain any outdoor solid fuel burning appliance without first obtaining a permit issued by the Township of Lower Nazareth.

**7.2** Before a permit can be issued hereunder, an inspection of the proposed installation shall be required. In addition, a site plan prepared by a registered professional engineer or professional land surveyor is required showing the location of the proposed appliance on the property, location and height of all existing structures on the adjacent properties, and distances from the appliance to existing structures on the adjacent properties. The manufacturer's specifications and instructions shall also be furnished to the Township before a permit can be issued.

**7.3** A permit can only be issued if all requirements contained in this Ordinance are strictly complied with.

**7.4** Any violation of the aforementioned conditions shall be deemed a violation of this Ordinance. Any violation of this Ordinance or the issued permit shall void the permit.



**7.5** The fee for a permit shall be determined by Resolution of the Board of Supervisors from time to time pursuant to the Township Fee Schedule.

**7.6** Any resident who has secured a permit to install an outdoor solid fuel burning appliance in so doing will also be agreeing to allow the Township Zoning Officer or any person designated by the Township to inspect the furnace if a written complaint is filed relative to a violation of this Ordinance.

**7.7** Upon sale or transfer of any real property, the permit shall be renewed. All appliances not meeting applicable emissions, setback or chimney height requirements shall be replaced, removed or rendered permanently inoperable.

#### **SECTION 8. LIABILITY**

A person utilizing or maintaining an outdoor solid fuel burning appliance shall be responsible for all fire suppression costs and any other liability resulting from damage caused by a fire.

#### **SECTION 9. RIGHT OF ENTRY AND INSPECTION**

Any authorized officer, agent, employee or representative of the Lower Nazareth Township Zoning and Codes Office, who presents credentials, may inspect any property for the purpose of ascertaining compliance with the provisions of this Ordinance. If access is denied, access shall be obtained pursuant to applicable laws of the Commonwealth of Pennsylvania.

#### **SECTION 10. ENFORCEMENT AND PENALTIES**

**10.1** The Zoning and Codes Officer of the Township of Lower Nazareth is authorized to enforce any provisions of this Ordinance.

**10.2** Any person, firm or corporation who shall violate any of the provisions of this Ordinance shall, upon being found liable therefor in a civil enforcement

proceeding commenced by the Township, pay a judgment of not more than Six Hundred (\$600.00) Dollars plus all Court costs, including reasonable attorney's fees incurred by the Township as a result thereof. Every day that a violation of this Ordinance continues shall be deemed to be, and shall constitute a separate offense hereunder.

**10.3** This Ordinance shall be governed by the laws of the Commonwealth of Pennsylvania.

**SECTION 11. SEVERABILITY**

Should any portion of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected. It is hereby declared that the intent of Lower Nazareth Township is that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

**SECTION 12. REPEALER**

All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

**SECTION 13. EFFECTIVE DATE**

This Ordinance shall become effective ten (10) days after adoption.

ENACTED AND ORDAINED This 18 day of NOVEMBER, 2009, by the Board of Supervisors of Lower Nazareth Township.

**TOWNSHIP OF LOWER NAZARETH**

**ATTEST:**

  
**TIMM TENGES, Secretary**

**BY:**

  
**ALAN DILSAVER, Chairman**